

## TERMINATION AGREEMENT

This TERMINATION AGREEMENT (the "Termination Agreement") is made and entered into as of the date set forth below, by and between Department of Water Resources, an agency of the State of California, with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Department"), and CALPEAK POWER – MISSION LLC ("Seller") (each individually a "Party" and collectively the "Parties").

### RECITALS

A. Department requires electric capacity and energy in connection with its responsibilities, as set forth in California Water Code Section 80000 *et seq.*

B. Seller and Department entered into that certain Power Purchase Agreement (together with any exhibits, schedules, and any written supplements thereto, the "Original Contract") dated as of August 14, 2001, whereby Seller proposed to develop, finance, construct and own a new electric generation facility (the "Facility"), located at San Diego, California, with an expected commercial operation date of not later than June 1, 2002.

C. Seller and Department have agreed that it would be mutually beneficial to terminate the planned construction of the Facility.

D. Subject to the terms and conditions set forth in this Termination Agreement, Seller and Department have agreed to terminate the Original Contract effective as of the effective date hereof.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. Unless otherwise defined herein or in any appendix hereto, the following terms shall have the respective meanings in this Termination Agreement:

"Act" shall mean ABX1-1 as amended by ABX1-31.

"Claims" means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage.

"Fund" means Department of Water Resources Electric Power Fund established by Water Code Section 80200.

"Governmental Authority" means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof.

"Law" means any statute, law, rule or regulation imposed by a Governmental Authority, whether in effect now or at any time in the future.

"Original Contract" means that certain Power Purchase Agreement (together with any exhibits, schedules, and any written supplements thereto) dated as of August 14, 2001, by and between Department and Seller.

"Party" means Department or Seller.

"State" means the State of California.

"Termination Agreement" shall mean this Termination Agreement.

"Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and monies on deposit in the Fund and income or revenue derived from the investment thereof.

2. Termination of Original Contract. Seller and Department hereby mutually agree that the Original Contract is hereby terminated effective immediately on this date and that all rights and obligations of the Parties thereunder are hereby mutually terminated on this date.

3. No Outstanding Obligations. Seller and Department hereby mutually agree and hereby acknowledge that each has received all compensation and reimbursements due from the other and that there are no outstanding obligations under the Original Contract due or owing of or from either Party as of the effective date of this Termination Agreement.

4. Termination Agreement Self-Executing. The Parties further agree that this Agreement shall be self-executing and the transaction contemplated herein shall be effected without the need for further documentation.

5. Sources of Payment; No Debt of State. The Parties acknowledge that Department has no obligation to make any payments hereunder and that if it did, Department's obligation to make payments hereunder shall be limited solely to the Trust Estate. Any liability of Department arising in connection with this Termination Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Termination Agreement, and any other payment obligation or liability of or judgment against Department hereunder, shall be satisfied solely from the Trust Estate. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS TERMINATION AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Termination Agreement.

6. Effective Date. This Termination Agreement shall be effective upon execution.

7. FERC Filing. The Parties acknowledge that on July 6, 2001, Seller applied to FERC for acceptance of its blanket market-based rate tariff. Seller obtained FERC acceptance of its market-based rate tariff in an order issued September 4, 2001, in Docket No. ER01-2544-000. The Parties acknowledge that Seller will file this Termination Agreement with FERC as part of a "Notice of Termination" filing made in compliance with FERC's requirements for terminating rate schedules set forth in 18 C.F.R. Section 35.15 (2002).

8. Limitations of Liability, Remedies and Damages. Each Party acknowledges and agrees that in no event shall any partner, shareholder, owner, officer, director, member of its governing bodies, employee, or affiliate of either Party be liable to any other person or Party for any payments, obligations, or performance due under this Termination Agreement or any breach or failure of performance of either Party, or for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Termination Agreement, including any negligence arising hereunder, and the sole recourse for

performance of the obligations under this Termination Agreement shall be against Seller and each of its assets, or against Department and the Trust Estate, and not against any other person.

9. Representations and Warranties of Department. As of the date hereof, Department makes the following representations and warranties:

(a) Pursuant to Water Code Section 80000 *et seq.*, Department is authorized and empowered to enter into this Termination Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, Department has duly authorized the execution and delivery of this Termination Agreement.

(b) The execution, delivery and performance by Department of this Termination Agreement and the consummation by Department of the transactions herein contemplated have been duly authorized and will not violate any provision of Law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which Department is a party or to which or by which it or any of its property is subject or bound.

(c) Assuming due and proper execution hereof by Seller, this Termination Agreement constitutes the legal, valid and binding obligation of Department enforceable against Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) There is no substantive action or proceeding pending or, to the best knowledge of Department, threatened by or against Department by or before any court or administrative agency that might adversely affect the ability of Department to perform its obligations under this Termination Agreement and all material authorizations, consents and approvals of Governmental Authorities required to be obtained by Department as of the date hereof in connection with the execution and delivery of this Termination Agreement or in connection with the performance of the obligations of Department hereunder have been obtained.

(e) All persons representing Department are the duly appointed incumbents in their positions in good standing in accordance with applicable Law.

(f) Entry into and performance of this Termination Agreement by Department is for a proper public purpose under the Act and all other relevant constitutional, organic or other governing documents and applicable Law.

10. Representations and Warranties of Seller. As of the date hereof, Seller makes the following representations and warranties:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware, is duly qualified to do business in and is in good standing under the Laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Termination Agreement. To the best of Seller's knowledge, Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Termination Agreement by Seller has been duly authorized by all material requisite action on the part of Seller and will not violate any provision of Law in any material respect, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of Seller, or any material indenture, agreement or other instrument to which Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) Assuming proper execution hereof by Department, this Termination Agreement constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) Other than the informational filing of this Termination Agreement with FERC as contemplated by Section 7 there is no substantive action or proceeding pending or, to the best knowledge of Seller, threatened by or against Seller by or before any court or administrative agency that might adversely affect the ability of Seller to perform its obligations under this Termination Agreement and all material authorizations, consents and approvals of Governmental Authorities required to be obtained by Seller as of the date hereof in connection with the execution and delivery of this Termination Agreement or in connection with the performance of the obligations of Seller hereunder have been obtained.

(e) Seller is solvent. No action has been instituted, with respect to Seller, by Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or petition have been presented or instituted for its winding-up or liquidation.

11. Governing Law. This Termination Agreement shall be governed by and construed in accordance with the Laws of the State, without regard to the conflicts of laws rules thereof.

12. Forum and Venue. All actions related to the matters which are the subject of this Termination Agreement shall be forumed and venued in a court of competent jurisdiction in the State of California.

13. Amendment. Neither this Termination Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by Department and Seller.

14. Counterparts. This Termination Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. Any signature page of this Termination Agreement may be detached from any counterpart of this Termination Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Termination Agreement identical in form hereto but having attached to it one or more signature pages.

15. Severability. In the event that any of the terms, covenants or conditions of this Termination Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory

body having jurisdiction, all other terms, covenants or conditions of this Termination Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Termination Agreement.

16. Third Party Beneficiaries. This Termination Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Termination Agreement or of any duty, obligation or undertaking established herein.

17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or party for or with respect to any Claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise.

18. Headings. The headings contained in this Termination Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Termination Agreement.

19. Application of Government Code and Public Contracts Code. Seller has stated that due to administrative burdens and delays associated with such requirements, Seller would not enter into this Termination Agreement if the provisions of the Government Code and the Public Contracts Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Termination Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Department has determined that it would be detrimental to Department's ability to satisfy the intent of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Termination Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Termination Agreement.

20. Prior Agreement Superseded. This Termination Agreement supersedes the Original Contract.

21. Settlement of Prior Claims. To resolve any and all disputes between them concerning rights under the Original Contract, Department and Seller agree that each, in consideration of the other's execution of this Termination Agreement, releases the other from any and all claims that either Party had, has, or ever shall have, whether known or unknown, asserted or unasserted, suspected or unsuspected, contingent or non-contingent, liquidated or unliquidated, based on, arising out of, or relating in any way to the Original Contract.

Each Party's execution of this Termination Agreement constitutes a full and final release by such Party, its parents, subsidiaries, divisions, affiliates or associates and anyone who may claim through any of them (including their former and present officers, directors, employees, shareholders or any of their assigns) of the other Party and its successors and assigns.

The Parties' execution of this Termination Agreement is for the resolution of claims that are doubtful or are in dispute, and is not in any way, implicitly or explicitly, an admission concerning Department's or Seller's rights under the Original Contract.

IN WITNESS WHEREOF, the Parties have caused this Termination Agreement to be executed by their duly authorized representative as of the 2nd day of May, 2002.

STATE OF CALIFORNIA DEPARTMENT OF  
WATER RESOURCES, separate and apart from its  
powers and responsibilities with respect to the State  
Water Resources Development System

By: \_\_\_\_\_  
Name: Peter S. Garris  
Title: Deputy Director

CALPEAK POWER – MISSION LLC

By: \_\_\_\_\_  
Name:  
Title: